

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Case No. SI-2013-38

RUSSELL GUY MARSHBURN
1513 W. Santa Ana Blvd.
Santa Ana, CA 92703

Applicant for Certified Public Accountant
License

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on June 29, 2013.

It is so ORDERED May 30, 2013.

Leslie J. LaManna
FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

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2 JAMES M. LEDAKIS
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9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

13 **RUSSELL GUY MARSHBURN**
14 **1513 W. Santa Ana Blvd.**
Santa Ana, CA 92703

15 **Applicant for Certified Public Accountant**
16 **License**

17 Respondent.

Case No. SI-2013-38

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

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19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Patti Bowers (Complainant) is the Executive Officer of the California Board of
23 Accountancy. She brought this action solely in her official capacity and is represented in this
24 matter by Kamala D. Harris, Attorney General of the State of California, by Carl W. Sonne,
25 Deputy Attorney General.

26 2. Respondent Russell Guy Marshburn (Respondent) is representing himself in this
27 proceeding and has chosen not to exercise his right to be represented by counsel.
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3. On or about January 3, 2012, Respondent filed an application dated December 30, 2011, with the California Board of Accountancy to obtain a Certified Public Accountant License.

JURISDICTION

4. Statement of Issues No. SI-2013-38 was filed before the California Board of Accountancy (CBA), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on March 18, 2013.

5. A copy of Statement of Issues No. SI-2013-38 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. SI-2013-38. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. SI-2013-38.

10. Respondent agrees that his Certified Public Accountant License is subject to denial and he agrees to be bound by the CBA's probationary terms as set forth in the Disciplinary Order below.

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1 **1. Obey All Laws**

2 Respondent shall obey all federal, California, other states' and local laws, including those
3 rules relating to the practice of public accountancy in California.

4 **2. Submit Written Reports**

5 Respondent shall submit, within 10 days of completion of the quarter, written reports to the
6 CBA on a form obtained from the CBA. The Respondent shall submit, under penalty of perjury,
7 such other written reports, declarations, and verification of actions as are required. These
8 declarations shall contain statements relative to respondent's compliance with all the terms and
9 conditions of probation. Respondent shall immediately execute all release of information forms
10 as may be required by the CBA or its representatives.

11 **3. Personal Appearances**

12 Respondent shall, during the period of probation, appear in person at interviews/meetings as
13 directed by the CBA or its designated representatives, provided such notification is accomplished
14 in a timely manner.

15 **4. Comply With Probation**

16 Respondent shall fully comply with the terms and conditions of the probation imposed by
17 the CBA and shall cooperate fully with representatives of the California Board of Accountancy in
18 its monitoring and investigation of the respondent's compliance with probation terms and
19 conditions.

20 **5. Practice Investigation**

21 Respondent shall be subject to, and shall permit, a practice investigation of the respondent's
22 professional practice. Such a practice investigation shall be conducted by representatives of the
23 CBA, provided notification of such review is accomplished in a timely manner.

24 **6. Comply With Citations**

25 Respondent shall comply with all final orders resulting from citations issued by the
26 California Board of Accountancy.

27 **7. Tolling of Probation for Out-of-State Residence/Practice**

28 In the event Respondent should leave California to reside or practice outside this state,

1 Respondent must notify the CBA in writing of the dates of departure and return. Periods of non-
2 California residency or practice outside the state shall not apply to reduction of the probationary
3 period, or of any suspension. No obligation imposed herein, including requirements to file
4 written reports, reimburse the CBA costs, and make restitution to consumers, shall be suspended
5 or otherwise affected by such periods of out-of-state residency or practice except at the written
6 direction of the CBA.

7 **8. Violation of Probation**

8 If Respondent violates probation in any respect, the CBA, after giving respondent notice
9 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
10 was stayed. If an accusation or a petition to revoke probation is filed against respondent during
11 probation, the CBA shall have continuing jurisdiction until the matter is final, and the period of
12 probation shall be extended until the matter is final.

13 The CBA's Executive Officer may issue a citation under California Code of Regulations,
14 Section 95, to a licensee for a violation of a term or condition contained in a decision placing that
15 licensee on probation.

16 **9. Completion of Probation**

17 Upon successful completion of probation, Respondent's license will be fully restored.

18 **10. Rehabilitation Program/Chemical Dependence**

19 Respondent shall successfully complete or shall have successfully completed a
20 rehabilitation program for chemical dependence that the CBA or its designee approves and shall
21 have reports submitted by the program. If a program was not successfully completed prior to the
22 period of probation, the respondent, within a reasonable period of time as determined by the CBA
23 or its designee but not exceeding 90 days of the effective date of the decision, shall be enrolled in
24 a program. In addition, respondent must attend support groups, (e.g. Narcotics Anonymous,
25 Alcoholic Anonymous etc.), as directed by the CBA or its designee. Respondent is responsible
26 for all costs of such a program.

27 **11. Drugs - Abstain From Use**

28 Respondent shall completely abstain from the personal use of all psychotropic drugs,

1 including alcohol, in any form except when the same are lawfully prescribed.

2 **12. Drugs - Screening**

3 Respondent shall participate or shall have participated in a drug screening program
4 acceptable to the CBA and shall have reports submitted by the program. Respondent is
5 responsible for all costs associated with said screening and reporting.

6 **13. Biological Fluid Testing**

7 Respondent, at any time during the period of probation, shall fully cooperate with the CBA
8 or its designee in its supervision and investigation of compliance with the terms and conditions of
9 probation, and shall, when requested, submit to such tests and samples as the CBA or its designee
10 may require for the detection of alcohol, narcotics, hypnotic, dangerous drugs, or controlled
11 substances. Respondent is responsible for all costs associated with this investigation and testing.

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ACCEPTANCE

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I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
stipulation and the effect it will have on my Certified Public Accountant License. I enter into this
Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
to be bound by the Decision and Order of the California Board of Accountancy.

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DATED:

5/13/13

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Russell Guy Marshburn
RUSSELL GUY MARSHBURN
Respondent

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ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Accountancy of the Department of Consumer Affairs.

Dated: *May 13, 2013*

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General



CARL W. SONNE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. SI-2013-38

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11 In the Matter of the Statement of Issues
12 Against:

Case No. SI-2013-38

13 **RUSSELL GUY MARSHBURN**

STATEMENT OF ISSUES

14 **Certified Public Accountant License**
15 **Applicant**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Statement of Issues solely in her official
21 capacity as the Executive Officer of the California Board of Accountancy, Department of
22 Consumer Affairs.

23 2. On or about January 3, 2012, the California Board of Accountancy, Department of
24 Consumer Affairs received an application for a Certified Public Accountant License from Russell
25 Guy Marshburn (Respondent). On or about December 30, 2011, Russell Guy Marshburn certified
26 under penalty of perjury to the truthfulness of all statements, answers, and representations in the
27 application. The California Board of Accountancy denied the application on November 6, 2012.

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JURISDICTION

3. This Statement of Issues is brought before the California Board of Accountancy (CBA), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 5110 of the Code states:

(a) After notice and an opportunity for a hearing, the board may deny an application to take the licensing examination, deny admission to current and future licensing examinations, void examination grades, and deny an application for a license or registration to any individual who has committed any of the following acts:

....

(4) Any act that if committed by an applicant for licensure would be grounds for denial of a license or registration under Section 480 or if committed by a licensee or a registrant would be grounds for discipline under Section 5100.

....

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

1 (1) Been convicted of a crime. A conviction within the meaning of this
2 section means a plea or verdict of guilty or a conviction following a plea of nolo
3 contendere. Any action that a board is permitted to take following the establishment
4 of a conviction may be taken when the time for appeal has elapsed, or the judgment
of conviction has been affirmed on appeal, or when an order granting probation is
made suspending the imposition of sentence, irrespective of a subsequent order under
the provisions of Section 1203.4 of the Penal Code.

5 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
6 substantially benefit himself or herself or another, or substantially injure another.

7 (3)(A) Done any act that if done by a licentiate of the business or profession
in question, would be grounds for suspension or revocation of license.

8 (B) The board may deny a license pursuant to this subdivision only if the
9 crime or act is substantially related to the qualifications, functions, or duties of the
business or profession for which application is made.

10 (b) Notwithstanding any other provision of this code, no person shall be denied
11 a license solely on the basis that he or she has been convicted of a felony if he or she
has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
12 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
convicted of a misdemeanor if he or she has met all applicable requirements of the
13 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
person when considering the denial of a license under subdivision (a) of Section 482.

14 (c) A board may deny a license regulated by this code on the ground that the
15 applicant knowingly made a false statement of fact required to be revealed in the
application for the license.

16 7. Section 482 of the Code states:

17 Each board under the provisions of this code shall develop criteria to evaluate
18 the rehabilitation of a person when:

19 (a) Considering the denial of a license by the board under Section 480; or

20 (b) Considering suspension or revocation of a license under Section 490.

21 Each board shall take into account all competent evidence of rehabilitation
furnished by the applicant or licensee.

22 8. Section 493 of the Code states:

23 Notwithstanding any other provision of law, in a proceeding conducted by a
24 board within the department pursuant to law to deny an application for a license or to
suspend or revoke a license or otherwise take disciplinary action against a person who
25 holds a license, upon the ground that the applicant or the licensee has been convicted
of a crime substantially related to the qualifications, functions, and duties of the
26 licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
27 may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
28 to the qualifications, functions, and duties of the licensee in question.

1 As used in this section, "license" includes "certificate," "permit," "authority,"
2 and "registration."

3 9. Section 5100 states:

4 After notice and hearing the board may revoke, suspend, or refuse to renew any
5 permit or certificate granted under Article 4 (commencing with Section 5070) and
6 Article 5 (commencing with Section 5080), or may censure the holder of that permit
or certificate for unprofessional conduct that includes, but is not limited to, one or any
combination of the following causes:

7 (a) Conviction of any crime substantially related to the qualifications, functions
8 and duties of a certified public accountant or a public accountant.

9

10 10. Section 5106 states:

11 A plea or verdict of guilty or a conviction following a plea of nolo contendere is
12 deemed to be a conviction within the meaning of this article. The record of the
13 conviction shall be conclusive evidence thereof. The board may order the certificate
14 or permit suspended or revoked, or may decline to issue a certificate or permit, when
15 the time for appeal has elapsed, or the judgment of conviction has been affirmed on
16 appeal or when an order granting probation is made, suspending the imposition of
sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea
of not guilty, or setting aside the verdict of guilty or dismissing the accusation,
information or indictment.

17 REGULATORY PROVISIONS

18 11. California Code of Regulations, title 16, section 99 states:

19 For the purposes of denial, suspension, or revocation of a certificate or permit
20 pursuant to Division 1.5 (commencing with Section 475) of the Business and
21 Professions Code, a crime or act shall be considered to be substantially related to the
22 qualifications, functions or duties of a certified public accountant or public accountant
23 if to a substantial degree it evidences present or potential unfitness of a certified
public accountant or public accountant to perform the functions authorized by his or
her certificate or permit in a manner consistent with the public health, safety, or
welfare. Such crimes or acts shall include but not be limited to those involving the
following:

24 (a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

25 (b) Fraud or deceit in obtaining a certified public accountant's certificate or a
26 public accountant's permit under Chapter 1, Division III of the Business and
Professions Code;

27 (c) Gross negligence in the practice of public accountancy or in the
28 performance of the bookkeeping operations described in Section 5052 of the code;

1 (d) Violation of any of the provisions of Chapter 1, Division III of the Business
2 and Professions Code or willful violation of any rule or regulation of the board.

3 12. California Code of Regulations, title 16, section 99.1 states:

4 When considering the denial of a certificate or permit under Section 480 of the
5 Business and Professions Code, the suspension or revocation of a certificate or permit
6 or restoration of a revoked certificate under Section 11522 of the Government Code,
the board, in evaluating the rehabilitation of the applicant and his present eligibility
for a certificate or permit, will consider the following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Criminal record and evidence of any act(s) committed subsequent to the
9 act(s) or offense(s) under consideration which also could be considered as grounds for
denial, suspension or revocation.

10 (3) The time that has elapsed since commission of the act(s) or offense(s)
11 referred to in subdivision (1) or (2).

12 (4) The extent to which the applicant or licensee has complied with any terms
13 of parole, probation, restitution, or any other sanctions lawfully imposed against the
applicant or licensee.

14 (5) If applicable, evidence of expungement proceedings pursuant to Section
1203.4 of the Penal Code.

15 (6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(April 11, 2006 Criminal Conviction for Possession of Methamphetamine on October 3, 2005)**

18 13. Respondent's application is subject to denial under sections 480, subdivisions
19 (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to
20 the qualifications, duties, and functions of a Certified Public Accountant (CPA). Said conduct
21 would be a ground for discipline under section 5100, subdivision (a) of the Code for a licensed
22 CPA. The circumstances are as follows:

23 a. On or about April 11, 2006, in a criminal proceeding entitled *People of the*
24 *State of California v. Russell Marshburn, aka Russell Guy Marshburn*, in Orange County
25 Superior Court, case number 05SF1380, Respondent pled guilty to violating Health and Safety
26 Code section 11377, subdivision (a), possession of a controlled substance, to wit,
27 methamphetamine, a felony (Count 1); and Penal Code section 12020, subdivision (a)(1),
28 possession of a knife and metal knuckles (Count 3). The court dismissed two counts of violating

1 Health and Safety Code section 11364, possession of controlled substance paraphernalia, a
2 misdemeanor, pursuant to a plea agreement.

3 b. As a result of the guilty plea, on or about April 6, 2006, the court deferred
4 judgment on Count 1. The court ordered Respondent to enroll and complete a drug program
5 pursuant to Penal Code section 1000. As to Count 3, Respondent was granted three years
6 summary probation. Respondent was ordered to pay fees, fines, and restitution, abstain from the
7 possession and use of unauthorized drugs, complete 120 hours of community service, and comply
8 with probation terms. On or about November 2, 2006, after failing to comply with the drug
9 program, the Penal Code section 1000 proceedings were ordered terminated. On December 12,
10 2006, Respondent was ordered to serve 90 days in the Orange County jail, with credit for two
11 days.

12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

13 **(July 23, 2007 Criminal Conviction for Possession of Controlled Substance**

14 **Paraphernalia on May 23, 2007)**

15 14. Respondent's application is subject to denial under sections 480, subdivisions
16 (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to
17 the qualifications, duties, and functions of a Certified Public Accountant (CPA). Said conduct
18 would be a ground for discipline under section 5100, subdivision (a) of the Code for a licensed
19 CPA. The circumstances are as follows:

20 a. On or about July 23, 2007, in a criminal proceeding entitled *People of the*
21 *State of California v. Russell Guy Marshburn, aka Russell Marshburn, aka Russ Guy Marshburn,*
22 in Orange County Superior Court, case number 07SM02261, Respondent pled guilty to violating
23 Health and Safety Code section 11364, possession of controlled substance paraphernalia, a
24 misdemeanor.

25 b. As a result of the conviction, on or about July 23, 2007, Respondent was
26 granted three years summary probation. Respondent was ordered to complete a drug program
27 pursuant to Penal Code section 1210, pay fees, fines, and restitution, abstain from the possession
28 and use of unauthorized drugs, and comply with probation terms.

1 THIRD CAUSE FOR DENIAL OF APPLICATION

2 (March 14, 2008 Criminal Conviction for Possession of Controlled Substance

3 Paraphernalia on November 12, 2007)

4 15. Respondent's application is subject to denial under sections 480, subdivisions
5 (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to
6 the qualifications, duties, and functions of a Certified Public Accountant (CPA). Said conduct
7 would be a ground for discipline under section 5100, subdivision (a) of the Code for a licensed
8 CPA. The circumstances are as follows:

9 a. On or about March 14, 2008, in a criminal proceeding entitled *People of*
10 *the State of California v. Russell Guy Marshburn, aka Russell Marshburn, aka Russ Guy*
11 *Marshburn, aka Russell G. Marshburn*, in Orange County Superior Court, case number
12 08SM00462, Respondent pled guilty to violating Health and Safety Code section 11364,
13 possession of controlled substance paraphernalia, a misdemeanor.

14 b. As a result of the conviction, on or about March 14, 2008, Respondent was
15 granted three years summary probation. Respondent was ordered to complete a drug program
16 pursuant to Penal Code section 1210, pay fees, fines, and restitution, abstain from the possession
17 and use of unauthorized drugs, and comply with probation terms.

18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
20 and that following the hearing, the California Board of Accountancy issue a decision:

21 1. Denying the application of Russell Guy Marshburn for a Certified Public Accountant
22 License;

23 2. Taking such other and further action as deemed necessary and proper.

24 DATED: March 14, 2013

25 Patti Bowers
26 PATTI BOWERS
27 Executive Officer
28 California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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